



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 11 September 2015
Ref. No.: RK 842/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI08/15

Applicant

Haki Hajdari

**Constitutional Review of Judgment of the Court of Appeal of the
Republic of Kosovo, PAKR 966/2012, of 11 September 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Haki Hajdari (hereinafter the “Applicant”), residing in Skenderaj.

Challenged decisions

2. The Applicant challenges the following judgments: Judgment of the Supreme Court, Pml. KZZ 1/2014, of 7 May 2014; Judgment of the Court of Appeals of Kosovo, PAKR 966/2012, of 11 September 2013; and Judgment of the District Court in Mitrovica, P. no. 45/2010, of 29 July 2011. While, the judgment of the District Court was served on the Applicant on 30 January 2012, the date of services of other judgments are unknown.

Subject matter

3. The subject matter is the constitutional review of three above-mentioned challenged judgments that were, according to the Applicant, all adopted in breach of Article 31 of the Constitution [Right to Fair and Impartial Trial], Article 54 of the Constitution [Judicial Protection of Rights] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter the "ECHR").

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter the "Law") and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 26 January 2015, the Constitutional Court of the Republic of Kosovo (hereinafter the "Court") received the referral submitted by the Applicant. It appears that the Applicant sent his referral *via* post office in Skënderaj on 5 August 2014.
6. On 9 February 2015, the President of the Court by Decision No.GJR.KI08/15 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH.KI08/15 appointed the Review Panel composed of judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 16 March 2015, the Applicant was notified of the registration of the Referral.
8. On 26 June 2015, the mandate of Judge Kadri Kryeziu ended. On 1 July 2015, the President of the Court by Decision No. KSH.KI08/15 appointed Judge Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu.
9. On 6 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 29 July 2011, the District Court in Mitrovica found the Applicant guilty for one count of War crimes against Civilian Population pursuant to Articles 22 and 142 of the Criminal Code SFRY and in conjunction with Common Article 3 Geneva Convention and Articles 4 and 5(1) Additional Protocol II (torture of a detained civilian). He was sentenced to 6 years of imprisonment. Furthermore, he was acquitted on one count of War Crimes against the Civilian Population. There were also four other co-accused who were found guilty by the same court on four counts of War Crimes against the Civilian Population.
11. The Applicant lodged a timely appeal against the judgment of 29 July 2011. He argued that the District Court, *inter alia*, had violated the norms of procedural law and erroneously and incompletely determined the factual situation. According to the Applicant, the District court did not give reasons, why it gave greater credibility to some evidence over the credibility other evidence as it related to some witness statements.
12. The other 4 co-accused also lodged their appeals against the judgment of 29 July 2011.
13. On 11 September 2013, the Court of Appeal adopted the Judgment, PAKR 966/2012 and rejected the Applicant's appeal as unfounded.
14. The Court of Appeal did not agree with the Applicant's submissions relating to the alleged violations of procedural law, in particular relating to the witness statements and the lack of reasoning in the judgment.
15. The Court of Appeal also addressed the claim made by the Applicant (and other 4 co-accused) that the District Court had established the factual situation wrongfully and incompletely. It stated as follows: "*the Court of Appeal[s] does not agree with such criticism and finds that the Appellants are targeting the judgment on the assessment of the evidence without any reasonable arguments. It is the prerogative of the trial panels to evaluate the evidence which they learnt first-hand during the main trial...*".
16. While the co-accused filed requests for protection of legality in January 2014, the Applicant did not do so.
17. On 7 May 2014, the Supreme Court adopted the Judgment (Pml. Kzz 1/2014) rejecting requests for protection of legality filed for two of the co-accused and partially approving the request for one of them.

Applicant's allegations

18. The Applicant alleges that "*in all stages of the procedure was challenged the jurisdiction or the territorial competence-the applicability of the criminal law of SFRY, outside the territory-the state border of former SFRY for the alleged criminal offences in the territory of another state (in Albania)...and whether the applicability of the international law, the Geneva Convention has legal ground in the state that is not involved in the war or in the armed conflict...*"

19. The Applicant further alleges that the first instance judgment was adopted in breach of right to fair trial since his evidence of defense was consistently disregarded.
20. He also argues *“that the First instance judgment and Judgment of Appeal...acted contrary to Article 31 of the Constitution... [based] only on one statement given by witness N. although it was in full contradiction with the statements of other witnesses...”*
21. The Applicant also alleged the following, *“Based on the second instance judgment and that of the Supreme Court we consider that there is considerable doubt regarding the accuracy of the decisive facts, determined in the decisions against which we file the referral for violation of the Constitution ...”*
22. Finally, the Applicant alleges that the Supreme Court erred in *“assessment in conclusion...At the same time it did not assess at all the jurisdiction-competences of the Kosovo courts...”*

Admissibility of the Referral

23. The Applicant complains that the challenged decisions were adopted in breach of Article 31 of the Constitution and Article 6 of the ECHR.
24. Article 31 of the Constitution, insofar as it is relevant, reads as follows:

“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.”
25. Article 6 of the ECHR, insofar relevant reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing...

3. Everyone charged with a criminal offence has the following minimum rights:

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”
26. The Court notes that to be able to adjudicate upon the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and further specified in the Rules of Procedure.
27. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”

28. The Court recalls that the Applicant challenges the judgment of the Supreme Court of 7 May 2014 (Pml. Kzz 1/2014).
29. The Court notes the Applicant did not use the opportunity provided in Article 418 of the Criminal Procedure Code to submit to the Supreme Court a request for protection of legality.
30. Thus, the Supreme Court judgment was adopted based on the request for protection of legality of three other co-accuseds who did exercise their legal right to file for protection of legality.
31. Therefore, the Court finds that the Applicant cannot argue that his rights to fair trial have been violated by the Supreme Court judgment in question, when he was not a party to the aforementioned proceedings.
32. As regards to the Applicant’s complaints regarding the judgments of the Court of Appeal and District Court in Mitrovica the last judgment that was adopted in the Applicant’s case was the judgment of the Court of Appeal on 11 September 2013 (PAKR 966/2012).
33. The Court further notes that majority of the Applicant’s complaints were related to the Court of Appeal and the first instance judgment, particularly the alleged erroneous or incomplete determination of the factual situation and violation of right to fair trial in that respect.
34. In this respect the Court recalls Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision (...)”.

35. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provide:

“(1) The Court may only deal with Referrals if:

...

c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant...”.

36. Based on the case file, the Court finds that the Applicant filed his referral on 5 August 2014, while the last decision, PAKR 966/2012, of the Court of Appeal was adopted on 11 September 2013. It is not known when the Applicant was served with this judgment; however the date in question was certainly before January 2014 when the other co-accused submitted their requests for protection of legality.

37. Consequently, it is clear that the Applicant filed his referral with this Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) c) of the Rules of Procedure.
38. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O' LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005)".
39. Therefore, the Court concludes that the Referral is filed out of time.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 6 July 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Arta Rama-Hajrizi